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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 10, 2014

10:06 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

The ResCap Borrower Claims Trust's Sixty - Second Omnibus  
Objection to Claims (No Liability Borrower Claims)

The ResCap Liquidating Trust's Sixty-Third Omnibus Claims  
Objection (Purported Administrative Claims)

The ResCap Liquidating Trust's Sixty-Fourth Omnibus Claims  
Objection (No Liability Tax Claims)

The ResCap Liquidating Trust's Sixty-Fifth Omnibus Claims  
Objection (No Liability Claims)

ResCap Liquidating Trust's Sixty-Sixth Omnibus Objection to  
Claims (I) Expunging Amended and Superseded Claims; (II)  
Redesignating and Allowing Claims; (III) Reducing and Allowing  
Claims; and (IV) Redesignating, Reducing and Allowing Claims

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RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. We're here  
3 in Residential Capital, number 12-12020. Mr. Wishnew?

4 MR. WISHNEW: Good morning, Your Honor. Jordan  
5 Wishnew, Morrison & Foerster, for the ResCap Borrower Claims  
6 Trust.

7 Your Honor, the first contested matter on today's  
8 agenda begins on the bottom of page 6.

9 THE COURT: What I'd like to do, Mr. Wishnew, let's  
10 start with the sixty-fourth --

11 MR. WISHNEW: Okay.

12 THE COURT: -- sixty-fourth, sixty-fifth, and sixty-  
13 sixth omnibus objections, which -- as to which no responses  
14 were filed. Okay?

15 MR. WISHNEW: Very good, Your Honor. Let me cede the  
16 podium to my colleague, Ms. Rothchild.

17 THE COURT: Thank you very much.

18 MS. ROTHCHILD: Good morning, Your Honor. So next --

19 THE COURT: Just make your appearance.

20 MS. ROTHCHILD: Oh, of course. Meryl Rothchild of  
21 Morrison & Foerster on behalf of the ResCap Liquidating Trust.

22 THE COURT: Thank you. Good morning.

23 MS. ROTHCHILD: Good morning. Next on the agenda is  
24 the -- I believe item number 4, the Trust's sixty-fourth  
25 omnibus objection to claims, no-liability tax claims, filed at

1 docket number 6846, which is going forward on an uncontested  
2 basis.

3 Your Honor, through the sixty-fourth omnibus claims  
4 objection, the trust seeks to expunge a total of fifty-eight  
5 asserted tax claims. In support of the objection, the trust  
6 submitted a declaration by Deanna Horst, chief claims officer  
7 of the ResCap Liquidating Trust, attached as Exhibit 1A to the  
8 objection, and a declaration by Joseph Morrow of KCC, in  
9 connection with the late-filed tax claim attached as Exhibit 1B  
10 to the objection.

11 Ms. Horst is in court today and can answer any  
12 questions the Court has. And I believe Mr. Morrow has appeared  
13 telephonically.

14 As the Court is aware from the papers, the purpose of  
15 this objection is to disallow and expunge tax claims for which  
16 the estates are not liable, as set forth in Exhibits A through  
17 C attached to the proposed order. Specifically, the trust  
18 seeks to disallow and expunge, on Exhibit A, a late-filed  
19 claim, filed after the governmental bar date of November 30th,  
20 2012. As set forth in the Morrow declaration, proper service  
21 was provided to this claimant, and further, pursuant to Article  
22 8(b) of the confirmed plan, any late-filed claim such as this  
23 one, is deemed automatically disallowed without need for  
24 further court order.

25 On Exhibit B, are asserted tax claims for which, upon

1 review of the debtors' books and records, indicate no liability  
2 on the part of the debtors. For example, the debtors were not  
3 owners of the property at issue for the time period during  
4 which the tax was asserted.

5 On Exhibit C, there are tax claims that have already  
6 been paid and satisfied by the debtors, it states, in the  
7 ordinary course of business.

8 Responses to the objection were due on May 22nd, and  
9 there was only one formal response docketed, the one filed by  
10 Marion County Treasurer at docket number 7000. The Trust and  
11 Marion County have effectively resolved the objection as to the  
12 Marion County tax claim, but have agreed to adjourn the matter  
13 to July 30th, just so that the parties can properly record the  
14 owner of certain deeds at issue. The notice of this  
15 adjournment was filed at docket number 7049.

16 In addition, the Trust had informal discussions with  
17 claimants Galveston County and the City of El Paso. As a  
18 result of those discussions, the Trust filed a notice of  
19 withdrawal of the sixty-fourth omnibus claims objection as to  
20 Galveston County at docket number 7048. The parties have  
21 agreed that maintaining the objection as to the City of El Paso  
22 tax claim is appropriate. So as all matters were resolved, the  
23 Trust did not file a reply, and unless the Court has any  
24 questions, the Trust requests that the sixty-fourth omnibus  
25 claims objection be sustained.

1 THE COURT: All right. Does anybody else wish to be  
2 heard with respect to the sixty-fourth omnibus objection?

3 All right. The sixty-fourth omnibus objection of the  
4 ResCap Liquidating Trust seeks an order disallowing and  
5 expunging the claims listed on Exhibits A, B and C. The  
6 objection is uncontested and is proceeding as to all claimants  
7 except for the Marion County Treasurer, as to which it's  
8 adjourned. Additionally, the trust withdrew its objection to  
9 the claim of Galveston County.

10 In support of the objection, the Trust attached the  
11 declarations of Deanna Horst and P. Joseph Morrow. The Court  
12 has reviewed the objection and the supporting declarations and  
13 exhibits. The objection is well-taken.

14 For the reasons stated in the objection, the sixty-  
15 fourth omnibus objection to claims is sustained and the claims  
16 are expunged other than with respect to the claims by Marion  
17 County and Galveston County.

18 MS. ROTHCHILD: Thank you, Your Honor. Next on the  
19 agenda is item number 5, the Liquidating Trust's sixty-fifth  
20 omnibus claims objection, no-liability claims, filed at docket  
21 number 6847, which is also going forward on an uncontested  
22 basis.

23 Through the sixty-fifth omnibus claims objection, the  
24 Trust seeks to expunge a total of fifty-one claims that each  
25 failed to sufficiently demonstrate that they are valid claims



1 for which the debtors' estates are liable.

2 In support of the objection, the Trust submits the  
3 declaration by Deanna Horst, again, chief claims officer of the  
4 Liquidating Trust, attached as Exhibit 1 to the objection.

5 Specifically, the Trust seeks to disallow and expunge  
6 those claims on Exhibit A where a review of the debtors' books  
7 and records show no amounts owing from the debtors' estates,  
8 for example, because the claimant is not a documented vendor  
9 with the debtors, or provided no invoices in connection with  
10 the claimant's purported claim, or the claimant failed to  
11 attach invoices and the like.

12 On Exhibit B, claims that were -- Exhibit B lists  
13 claims that were wrongly asserted against a debtor entity where  
14 such claims are the liabilities of nondebtor entities.

15 On Exhibit C, claims -- Exhibit C includes claims that  
16 have already been paid and satisfied by the debtors in the  
17 ordinary course of business. And lastly, on Exhibit D, there's  
18 a list of redundant claims that are substantially duplicative  
19 of at least one other claim filed by that same claimant. The  
20 trust seeks to disallow these claims to avoid having those  
21 claimants receive an improper double recovery from the debtors'  
22 estates.

23 Responses to this objection were also due May 22nd.  
24 There were no responses received in connection with this  
25 objection. So unless the Court has any further questions, the

1 Trust requests that the Court sustain the sixty-fifth omnibus  
2 claims objection.

3 THE COURT: Does anyone wish to be heard with respect  
4 to the sixty-fifth omnibus objection to claims?

5 All right, hearing no one, the sixty-fifth omnibus  
6 objection of the Trust seeks and order disallowing and  
7 expunging the claims listed on Exhibits A, B, C, and D. The  
8 objection is proceeding as to all claimants, and is unopposed.

9 In support of the objection, the trust submitted the  
10 declaration of Deanna Horst. The Court has reviewed the  
11 objection and the supporting declaration. The objection is  
12 well-taken. For the reasons stated in the objection, the  
13 sixty-fifth omnibus objection to claims is sustained and the  
14 claims are expunged.

15 MS. ROTHCHILD: Thank you, Your Honor. The next  
16 claims matter on the agenda for today is number 6, the  
17 Liquidating Trust's sixty-sixth omnibus objection to claims:  
18 1) expunging amended and superseded claims; 2) redesignating  
19 and allowing claims; 3) reducing and allowing claims; and  
20 4) redesignating, reducing, and allowing claims, filed at  
21 docket number 6848, which is going forward on an uncontested  
22 basis.

23 Your Honor, through the sixty-sixth omnibus claims  
24 objection, the trust seeks to expunge sixty claims as amended  
25 and superseded claims, and seeks to modify the other twenty-

1 four claims listed on Exhibits B through D of the -- appended  
2 to the proposed order.

3           Such modification includes redesignating claims to the  
4 appropriate debtor entity and allowing such claims, so as to  
5 accurately reflect the liability for each debtor group, if a  
6 debtor is liable for such claims; to reduce and allow claims  
7 where the filed proof of claim asserts that the debtor is  
8 liable for an amount greater than what is reflected in the  
9 debtors' books and records, and four, effectively combining the  
10 second and third, the redesignation, as well the reduction and  
11 allowance of certain asserted claims.

12           In support of the objection, the Trust submitted a  
13 declaration by Ms. Horst attached as Annex 1 to the objection.  
14 Responses were due on May 22nd. There was one formal response  
15 docketed and that was filed by the Law Office of Robert C.  
16 Dougherty at docket number 6965.

17           The Trust and the Law Office of Robert C. Dougherty  
18 has resolved the objection as to the claimant's claim and have  
19 agreed to reflect a modified amount of the reduced and allowed  
20 claim asserted by this law firm -- by this claimant.  
21 Effectively, claim number 576 shall be reduced from \$2,279.23  
22 to \$1,666.23. The trust will submit an updated exhibit to be  
23 included in the proposed order, and we'll submit that to the  
24 Court.

25           Also, based on informal discussions with claimant Wier

1 & Partners LLP, the Liquidating Trust filed a notice of  
2 withdrawal as to the sixty-sixth objection as to this claim at  
3 docket number 6995. The removal of this claim will also be  
4 reflected in an updated exhibit to the proposed order.

5 I believe that Kramer Levin, as co-counsel to the  
6 Liquidating Trust, has some comments to note on the record in  
7 connection with this omnibus objection.

8 THE COURT: Okay. Thank you, Ms. Rothchild.

9 MR. SHIFER: Good morning, Your Honor. Joseph Shifer  
10 with Kramer Levin, co-counsel to the Liquidating Trust.

11 THE COURT: Good morning.

12 MR. SHIFER: Good morning, Your Honor. We filed this  
13 objection together with the Morrison & Foerster firm. In  
14 connection with the objection, we seek the expungement of claim  
15 number 3574, by PNC Mortgage, as it is superseded by claim  
16 number 6410. We received an informal response by PNC, and in  
17 consensual resolution of the response, we agreed on language to  
18 be read into the record. If I can do that?

19 THE COURT: Sure. Go ahead.

20 MR. SHIFER: Okay. Notwithstanding the expungement of  
21 PNC's original claim, claim number 3574, from the claims  
22 register, PNC's surviving claim, claim number 6410, to the  
23 extent that it is a valid amendment of the original claim,  
24 shall be deemed to be timely filed as of the date of the  
25 original claim. All other rights and arguments of the parties

1 with respect to PNC's surviving claim, including the validity  
2 of the amendment, are hereby reserved.

3 THE COURT: All right. Thank you very much.

4 MR. SHIFER: Thank you, Your Honor.

5 THE COURT: Ms. Rothchild, anything else?

6 MS. ROTHCHILD: No, Your Honor. With that, the Trust  
7 respectfully requests that the Court sustain the sixty-sixth  
8 omnibus claims objection.

9 THE COURT: All right. Does anybody wish to be heard  
10 with respect to the sixty-sixth omnibus objection to claims?

11 All right, the sixty-sixth omnibus objection of the  
12 Trust seeks an order disallowing and expunging the claims  
13 listed on Exhibit A and modifying, redesignating, and reducing  
14 and allowing claims listed on Exhibits B, C, and D. With the  
15 exceptions noted by counsel, the objection is proceeding as to  
16 all other claimants, and is unopposed.

17 In support of the objection, the trust submitted the  
18 declaration of Deanna Horst. The Court has reviewed the  
19 objection and the supporting declaration. The objection is  
20 well-taken. For the reasons stated in the objection, the  
21 sixty-sixth omnibus objection to claims is sustained. The  
22 claims listed on Exhibit A are expunged. The claims listed on  
23 Exhibits B, C, and D, are reclassified, reduced and allowed in  
24 the manner provided in the objection. And I understand you'll  
25 be submitting revised exhibits to reflect the agreements that

1 you've recited on the record.

2 MS. ROTHCHILD: That's correct, Your Honor. Thank  
3 you.

4 THE COURT: Thank you very much.

5 MR. SHIFER: May I be excused, Your Honor?

6 THE COURT: Yes, you can.

7 MR. SHIFER: Thank you.

8 THE COURT: Thank you very much.

9 MR. WISHNEW: Just for the record, Your Honor. Jordan  
10 Wishnew, Morrison & Foerster, for the ResCap Borrower Claims  
11 Trust.

12 Going back to the bottom of page 6 of today's agenda,  
13 item 2 is the Borrower Trust's sixty-second omnibus claims  
14 objection for certain no-liability claims.

15 The objection identifies thirty claims that the  
16 Borrowers Trust assert should be expunged and disallowed on the  
17 basis that those claims fail to state a valid liability against  
18 the debtors on account of any sort of -- on account of their  
19 pre-petition actions. Five responses were received to that  
20 objection. One matter is being adjourned, as reflected on  
21 today's agenda. The other four are going forward today.

22 With regard to the responses, we'll start with the  
23 response of Scott and Linda Ewing, which is docketed at 6974.  
24 This is a claim -- claim number 2152, a 100,000-dollar general  
25 unsecured claim. And essentially, the claimant asserts in its

1 response that GMAC Mortgage overvalued his home.

2 THE COURT: Before you go on for a minute.

3 MR. WISHNEW: Sure.

4 THE COURT: Is anyone appearing on behalf of the  
5 Ewings?

6 Go ahead, Mr. Wishnew.

7 MR. WISHNEW: Thank you, Your Honor. And while the  
8 allegation of overvaluing by GMAC Mortgage is made, the problem  
9 is that there's no evidence in the record to support that  
10 argument. GMAC Mortgage serviced this loan. It was originated  
11 in -- by Ally Bank. And the debtors ultimately transferred  
12 their servicing rights to Ocwen.

13 Now, I understand from the response that the Ewings  
14 are, I can say, disappointed with the way Ocwen has been  
15 administering the loan. But there's no liability for GMAC  
16 Mortgage for Ocwen's administration of the loan, subsequent to  
17 the time that servicing rights were transferred.

18 So on the basis that there has not been a stated  
19 liability that could exist against GMAC Mortgage, the Borrowers  
20 Trust would ask that this claim be expunged for the reasons set  
21 forth in the objection.

22 THE COURT: All right. I take it no one is appearing  
23 on behalf of the Ewings?

24 All right, with respect to the -- first off, with  
25 respect to the sixty-second omnibus objection, which is filed

1 at ECF docket number 6815, in support of the objection, the  
2 Trust attached the declarations of Deanna Horst and Norman  
3 Rosenbaum. The Trust also attached the form of the request  
4 letters that it sent to all claimants. And following  
5 oppositions by four claimants, the Trust submitted a reply  
6 which is at ECF docket number 7062, supported by the  
7 supplemental declaration of Deanna Horst, which is at ECF  
8 docket 7062-1.

9 With respect to the Ewing claim, claim number 2152,  
10 Scott and Linda Ewing filed a 100,000-dollar claim against  
11 debtor GMAC Mortgage LLC, which stated the basis as  
12 "overestimated homes value/overcharged".

13 In support of their claim, the Ewings attached a  
14 mortgage account statement issued by GMAC-M indicating a  
15 \$1,079.58 payment due by November 1, 2012, with a principal  
16 balance of \$199,047.58. Responding to a request letter, the  
17 Ewings further alleged that GMAC-M refused to reduce the  
18 principal balance of their loan through a loan modification.

19 In its objection, the Trust treats this claim as  
20 asserting liability for origination and loan modification  
21 issues, and the Trust also objects on general no-liability  
22 grounds.

23 The loan was originated by Ally Bank. GMAC-M bought  
24 the Ewings' loan from Ally Bank on or about March 3rd, 2011,  
25 and then transferred the loan to Fannie Mae, on or about March



1 29th, 2011. GMAC-M also serviced the Ewings' loan from March  
2 3, 2011 until February 16, 2013, when it transferred the  
3 servicing rights to Ocwen Loan Servicing.

4 To the extent the claim asserts liability for  
5 origination issues, such as overestimating the property value,  
6 the Trust notes that Ally Bank originated the loan, not GMAC-M.  
7 And to the extent the claim asserts liability for refusal to  
8 modify the Ewings' loan, the Trust states that the Ewings  
9 contacted GMAC-M about a principal reduction on June 1, 2012,  
10 but GMAC-M informed the Ewings that they did not qualify for  
11 HAMP modification, because the property is not owner-occupied.

12 As already mentioned, the Trust sent a letter  
13 requesting additional information from the Ewings, and they  
14 responded. And in their response to the debtors' request  
15 letter, the Ewings submitted more documentation in support of  
16 their claim. They claim that their home still has a negative  
17 equity balance, even after they put down 50,000 dollars.

18 They state that when they asked GMAC-M to have their  
19 principal reduced, Mr. Ewing was ill and could not continue to  
20 work. GMAC-M declined to modify their loan. Mrs. Ewing  
21 describes being forced to move from their Florida residence to  
22 the Georgia home, and shortly after, she asserts that she  
23 suffered a heart attack. They continued to ask -- the Ewings  
24 continued to ask GMAC-M for a loan modification, but GMAC-M  
25 continued to refuse.

1           The Ewings filed an opposition to the objection which  
2   is at ECF 6974. The opposition argues that GMAC-M did, in  
3   fact, overvalue the price of our home and thus caused us to  
4   lose tens of thousands of dollars. The Ewings assert that due  
5   to health reasons, they were forced to sell their property at a  
6   great loss, partly due to the overvaluation and partly because  
7   Ocwen refused to refinance the Ewings' loan, because they are  
8   "a debt collection agency." That's according to Mrs. Ewing.

9           The debtors filed a reply which is at ECF 7062. The  
10   Trust emphasizes that GMAC-M did not originate the Ewings' loan  
11   so it cannot be responsible for overvaluing the Ewings'  
12   property. As for the modification issues -- loan modification  
13   issues, the Trust attaches the servicing notes for the Ewings'  
14   loan. It's attached as Exhibit G to the supplemental Horst  
15   declaration, which indicates that on June 1, 2012, the Ewings  
16   told GMAC-M that they had been trying to move into the Georgia  
17   property since 2008, but they had been unable to sell their  
18   Florida property, so they only went to the Georgia property  
19   three or four times a year.

20           GMAC-M informed the Ewings that this meant that they  
21   did not qualify for HAMP modification, because this wasn't an  
22   owner-occupied residence. And they also did not qualify for a  
23   refinance, because the property was under water.

24           The Court has carefully reviewed the objection, the  
25   response that the Ewings made to the request for additional

1 information, the Ewings' opposition, and the Trust's reply.  
2 The Court sustains the objection to the Ewings' claim. The  
3 Trust responded to the claim with evidence that it did not  
4 originate the Ewings' loan so it cannot be held liable for  
5 overvaluing the Ewings' property.

6 The Trust also provided evidence that it responded to  
7 the Ewings' request for loan modification by informing the  
8 Ewings that they did not qualify under the relevant statute.  
9 Even if the Ewings had qualified, the evidence indicates that  
10 they did not submit adequate documentation for GMAC-M to  
11 process a loan modification before the servicing rights were  
12 transferred to Ocwen.

13 So I am sustaining the objection. But Mr. Wishnew, I  
14 would request that you or one of your colleagues contact the  
15 Ewings and see if you can put them in touch with Ocwen's  
16 attorneys to learn precisely what Ocwen needs to consider the  
17 Ewings for a loan modification.

18 MR. WISHNEW: I will --

19 THE COURT: That won't be part of the order, but I am  
20 directing that --

21 MR. WISHNEW: Understood, Your Honor.

22 THE COURT: -- that be done.

23 MR. WISHNEW: Absolutely.

24 THE COURT: Okay. So that deals with the Ewings'  
25 claim, which is claim 2152. So the objection is sustained.

1 MR. WISHNEW: Thank you very much, Your Honor.

2 THE COURT: And the claim is expunged. Go ahead.

3 MR. WISHNEW: Thank you. The next contested matter  
4 within the sixty-second omnibus claims objection is that of the  
5 claim of Mr. Cozzolino, claim 1372, a general unsecured claim  
6 in the amount of 193,274 dollars.

7 THE COURT: All right. Is anyone appearing for Mr.  
8 Cozzolino?

9 Go ahead, Mr. Wishnew.

10 MR. WISHNEW: Thank you, Your Honor.

11 Again, Your Honor, this is a loan in which the debtors  
12 only touched the loan for approximately five weeks in 2007.  
13 The debtors serviced the loan during that time. They never  
14 owned the loan. It was originated by MortgageIT.

15 THE COURT: When was it originated?

16 MR. WISHNEW: May 17th, 2007, Your Honor.

17 THE COURT: Go ahead.

18 MR. WISHNEW: And essentially, what Mr. Cozzolino  
19 seems to take issue with is the use of the MERS system and what  
20 he believes to be purported illegal liens imposed by MERS  
21 against his property.

22 Essentially, Your Honor, the Borrowers Trust objection  
23 is that the issues raised by Mr. Cozzolino in his claim and in  
24 his response go to the actions of nondebtor entities. There's  
25 no specific action within the five-week time frame that we

1 serviced this loan that Mr. Cozzolino points to and says the  
2 debtors harmed me. So in that regards, for the reasons stated  
3 in both the objection and our reply, it's the Borrowers Trust's  
4 position that the claim should be disallowed and expunged.

5 THE COURT: I'm going to take it under submission and  
6 issue a written order.

7 MR. WISHNEW: Understood, Your Honor.

8 The next contested matter before the Court in regards  
9 to the sixty-second omnibus objection, is that of Tomas Diaz.  
10 I believe he is on the phone, Your Honor.

11 THE COURT: Mr. Diaz, are you on the phone?

12 MR. DIAZ: Yes. Hello.

13 THE COURT: Okay, thank you. I'll give you an  
14 opportunity to speak after Mr. Wishnew argues, okay?

15 MR. DIAZ: Okay.

16 THE COURT: Go ahead, Mr. Wishnew.

17 MR. WISHNEW: Thank you, Your Honor.

18 Your Honor, this deals with a claim (sic) that was  
19 originated by Platinum Capital Group back in 2006. The debtors  
20 subsequently purchased this loan and delivered it into a  
21 securitization within a week, but continued servicing the loan  
22 through April 1st, 2008, when Aurora Loan Servicing took over  
23 servicing of this loan. So the debtors have had no connection  
24 with this loan since April 1st, 2008, at the latest.

25 The claimant, according to his submissions, is seeking

1 the 400,000-dollar down payment he made on this property back  
2 from the debtors, but still -- it's the Borrowers Trust  
3 position that there is no valid basis for any sort of liability  
4 against a debtor entity here. There are allegations the loan  
5 was not transferred, sold, or assigned properly. But both the  
6 mortgage and the note were -- and have been -- held by Deutsche  
7 Bank, especially at the time that foreclosure proceedings were  
8 begun against Mr. Diaz.

9 In addition, he complains against the fact that  
10 there's a lost note affidavit. And all that basically does is  
11 that represents that at a certain point in time, the debtors  
12 didn't -- could not actually find a copy of the note and  
13 indicated that the note with prior endorsements from Platinum  
14 to RFC and from RFC to Deutsche was lost, but that copies were  
15 available.

16 So basically, while there are concerns about possibly  
17 transfers within MERS, the fact of the matter is that the  
18 documents line up. The documents show that these properties --  
19 that both the note and the mortgage properly transferred among  
20 entities; that to the extent the debtors transferred their  
21 interest in the mortgage, it was done properly. To the extent  
22 that they transferred the interest in the note, it was done  
23 properly. And there is no specific allegation against  
24 Residential Funding Corporation for the period of time in which  
25 it dealt with the loan, of any wrongdoing.

1           If there are concerns in that Aurora Loan Servicing,  
2   who dealt with the loan after April 2008, or other subsequent  
3   servicers have not dealt with Mr. Diaz to his satisfaction,  
4   that's between him and those parties. But with regards to his  
5   dealings with the debtor entities, there's no specific evidence  
6   of wrongdoing or liability against a debtor entity. And so for  
7   those reasons, we'd ask that the claim be expunged.

8           THE COURT: Let me ask you some questions.

9           MR. WISHNEW: Sure.

10          THE COURT: With -- the papers include a copy of a  
11   note --

12          MR. WISHNEW: Correct.

13          THE COURT: -- endorsed from Platinum to RFC and from  
14   RFC to Deutsche Bank.

15          MR. WISHNEW: Yes, Your Honor.

16          THE COURT: And yes, I've seen the affidavit of lost  
17   note. The note that's included in the papers, is that a  
18   copy -- an exact copy of the note, and it was just that the  
19   original couldn't be found? Can you -- or was it a  
20   replacement --

21          MR. WISHNEW: I --

22          THE COURT: -- actually endorsed by the parties at a  
23   subsequent time? Can you tell me?

24          MR. WISHNEW: I believe it's as you posited in the  
25   first instance, that an original could not be --

1 THE COURT: The photocopy that's included in the  
2 papers --

3 MR. WISHNEW: That's correct, Your Honor.

4 THE COURT: -- is a photocopy of the actual note,  
5 endorsed first from Platinum to RFC and then from RFC to  
6 Deutsche Bank. Is that what you're telling me?

7 MR. WISHNEW: That's correct, Your Honor.

8 THE COURT: Okay.

9 MR. WISHNEW: And so that there's two very -- let  
10 me -- two identical copies of the note. There's one if you  
11 were to look at it at Exhibit J to Ms. Horst's declaration in  
12 support of the reply. That's a very clear copy of the note.  
13 And then you also have the copy included among Mr. Diaz's  
14 diligence response. That's at Exhibit A3 to Ms. Horst's  
15 declaration. Again, same thing. You've got the exact same  
16 endorsements for the same adjustable-rate note.

17 So I think it's -- the evidence is clear that there  
18 was certainly a transfer from Platinum to RFC, RFC to Deutsche.  
19 With regards to a certain period of time when the original note  
20 could not be produced, there was a lost note affidavit.

21 And I would also add, for the record, that the lost  
22 note affidavit, which is also included among Mr. Diaz's  
23 response, specifically says that the RFC representative -- that  
24 states that the note, a copy of which is attached in a true and  
25 correct photocopy of the front and back, has been lost,



1 misplaced or destroyed and cannot be produced. So --

2 THE COURT: Who signed the affidavit?

3 MR. WISHNEW: According to the signature block, it's  
4 S. Seidel, and assistant secretary at Residential Funding  
5 Company, LLC.

6 THE COURT: Okay.

7 MR. WISHNEW: And I would just also add for the  
8 record, that that same lost note affidavit states in bold and  
9 in caps in the middle of the page, "In the event the original  
10 note is hereafter located, Residential Funding Company, LLC  
11 shall deliver it to the appropriate custodian.

12 THE COURT: All right. Let me ask a couple of  
13 additional questions. In the papers that are before me, there  
14 are copies of two recorded assignments of the mortgage. The  
15 first assignment, it's at ECF docket 7013, page 12 of 30; and  
16 it was recorded on May 15th, 2006 and shows an assignment of  
17 the mortgage from MERS as nominee for Platinum Capital Group to  
18 Deutsche Bank Trust Company Americas as trustee.

19 The second assignment of mortgage which was recorded  
20 appears at ECF docket 7013, page 24 of 30. And again, it says  
21 that it's an assignment of mortgage from MERS as nominee for  
22 Platinum Capital Group to Deutsche Bank, and it is dated  
23 October 28, 2013. Why are there two assignments of a mortgage  
24 from Platinum to Deutsche Bank?

25 MR. WISHNEW: I would only posit, Your Honor, that --

1 THE COURT: Have you inquired?

2 MR. WISHNEW: I have not specifically inquired as to  
3 that question, Your Honor. I certainly can.

4 THE COURT: Ms. Horst is here. Is she --

5 MR. WISHNEW: May I --

6 THE COURT: -- can you confirm with her and see  
7 whether she has -- I mean, look, you argue and may well be  
8 correct that if Mr. Diaz has a problem about clouds on title or  
9 anything that happened when none of the debtors were on the  
10 scene, he's complaining about the wrong party.

11 MR. WISHNEW: Sure.

12 THE COURT: Okay. The debtors were on the scene when  
13 the first assignment was recorded in May 2006. The assignment  
14 form says "return to Residential Funding Company". And I guess  
15 my question, was there some defect in the assignment that  
16 someone subsequently tried to cure? So why don't you confer  
17 with Ms. Horst and see whether there's any explanation for why?  
18 Let me just -- adding to that, to my questions -- give me a  
19 second.

20 (Pause)

21 THE COURT: In 2007, Deutsche Bank initiated a  
22 foreclosure action in Florida State Court. My 2008 order (and  
23 Deutsche Bank's ex parte motion to reset foreclosure sale) and  
24 in connection with that, Deutsche Bank asserted that it sold  
25 the loan to Aurora and somehow that doesn't mesh with what

1 appears that Deutsche Bank asserted ownership to the loan  
2 through at least July 2012 as trustee for the RALI trust.

3 And sort of in between these events in September 6th,  
4 2007, there was an affidavit from Cheryl Samons, who is an  
5 attorney for Homecomings. It was filed on behalf of Deutsche  
6 Bank and Ms. Samons was an attorney with the Law Office of  
7 David J. Stern, as to which we've had prior discussion at an  
8 earlier hearing. Mr. Stern has been disbarred for various  
9 misconduct.

10 Really, I come back to why are there two assignments  
11 of the mortgage from Platinum to Deutsche Bank? Was the first  
12 assignment defective and is Ms. Horst able to supply any  
13 information about that? Why don't you confer with her?

14 MR. WISHNEW: Okay. If I could just step away from  
15 the podium for a moment.

16 THE COURT: Yes, go ahead. Sure.

17 MR. WISHNEW: Thank you, Your Honor.

18 (Pause)

19 MR. WISHNEW: Your Honor, I've had a chance to confer  
20 with Ms. Horst. Unfortunately, I don't have a good answer for  
21 you as to why there are multiple -- or I'm sorry, two  
22 assignments of mortgages that are nearly identical which occur  
23 at two different points in time. I'd only add -- I could  
24 only --

25 THE COURT: At least they're between the same parties.

1 MR. WISHNEW: They are between the same parties. And  
2 consistent with Mr. Diaz's mortgage in which he acknowledges  
3 that MERS is -- sorry, let me just get a copy of the mortgage  
4 real quick. In paragraph (c) on page 1 of his mortgage, he  
5 does specifically acknowledge that "MERS is the mortgagee under  
6 the security interest and MERS is a separate corporation acting  
7 solely as nominee for lender and lender's successors and  
8 assigns."

9 So MERS' role in connection with Mr. Diaz's loan is  
10 clear. The specific reason for Deutsche Bank wanting to take  
11 multiple assignments of the loan at different points --

12 THE COURT: No, this is the mortgage not the loan.

13 MR. WISHNEW: Oh, I'm sorry. I'm sorry, the  
14 mortgage -- at different points in time, we would have to go  
15 back and try and reach out to them to find that out.

16 THE COURT: Okay. All right. Let me see if I have  
17 any other questions for you before Mr. Diaz speaks.

18 (Pause)

19 THE COURT: All right. Let me hear from Mr. Diaz. Go  
20 ahead, Mr. Diaz.

21 MR. DIAZ: Yes, Your Honor, my name is Tomas Diaz.  
22 Good morning.

23 THE COURT: Yes, go ahead.

24 MR. DIAZ: Okay. Your Honor, I have a clouded title.  
25 Nobody give it to me, the answer to that. It's impossible to

1 sell the property. I lost everything because they don't have  
2 original papers and they use MERS to fabricate assignment.  
3 This title puts too much my life down. I interesting to pay if  
4 they give it to me original paper and the clear papers. No  
5 problem papers. That's my position. I lost everything because  
6 they not giving to me the right papers. They used David Stern.  
7 They used Mr. -- counsel, Marshall Watson. He's convicted,  
8 conviction of guilty. They -- Residential Capital Funding used  
9 this person as counselors. They involved in fraud papers. And  
10 that's the reason because the paper no appear. The original  
11 paper is lost. Somebody drop it. And I want my fee for that.  
12 Thank you.

13 THE COURT: Mr. Diaz, let me ask you a few questions,  
14 okay?

15 MR. DIAZ: Yes.

16 THE COURT: So you did take out the loan from  
17 Platinum, correct?

18 MR. DIAZ: Yes, I got them the mortgage.

19 THE COURT: Okay. And when you took the loan from  
20 Platinum, you signed a promissory note. Is that correct?

21 MR. DIAZ: I think so.

22 THE COURT: Okay.

23 MR. DIAZ: But I don't have original papers on it.

24 THE COURT: All right. What I'm having --

25 MR. DIAZ: There's nothing -- I'm sorry.

1 THE COURT: Okay. What I'm having some difficulty  
2 with is understanding why you think title is clouded. I  
3 understand that there are two recorded assignments of the  
4 mortgage -- and I asked Mr. Wishnew about that -- one from 2006  
5 and the second one from 2013. But both of those recorded  
6 assignments are for the same mortgage and between -- and the  
7 assignments are between the same parties: Platinum, from whom  
8 you obtained your original loan, and Deutsche Bank, which holds  
9 the note and mortgage as trustee for a securitization trust.

10 So when you say that somehow title is clouded, I don't  
11 understand why you believe that to be the case because --

12 MR. DIAZ: Well --

13 THE COURT: -- the record seems to show that both the  
14 note and the mortgage are held by Deutsche Bank as trustee for  
15 a trust. Go ahead.

16 MR. DIAZ: Okay. I think that's a clouded title  
17 because we have it -- we don't have the original copy, original  
18 paper for the notes and loan notes. Second one, the people  
19 involved, in that transaction, specifically counsel man, David  
20 Stern and Marshall Watson, their involvement in difficult  
21 times, they are conviction of guilty for fabricate papers and  
22 doing bad things. They be party to the Residential Capital  
23 Funding.

24 And also, they sell -- Deutsche sells the loan to  
25 another loan service according to the -- they say because I

1 don't have a record of that. Only I have the records in the  
2 corporate year. That's when we started to defend in 2006 like  
3 when we want to see their paper, original paper. We want to  
4 see the transfers. We want to see clear assignments, and they  
5 no show. They show whatever they wanted. They wanted --  
6 fabricated some assignments and you see in 2013, again they  
7 presented this on this mortgage.

8 THE COURT: Let me ask you this.

9 MR. DIAZ: How they -- how did they lose -- I'm sorry.

10 THE COURT: No. Let me ask you a couple of questions  
11 because you originally had bought the property for 1.4 million  
12 dollars with a 400,000-dollar down payment, and you had  
13 borrowed a million dollars from Bank United. Is that correct?

14 MR. DIAZ: Correct.

15 THE COURT: All right. And then in April 2006, you  
16 refinanced the mortgage with Platinum Capital Group, correct?

17 MR. DIAZ: Correct.

18 THE COURT: And I think I've already asked you this,  
19 at that time you signed a promissory note for the mortgage and  
20 you signed the mortgage documents, correct?

21 MR. DIAZ: That's correct.

22 THE COURT: Okay. And in your papers -- and I must  
23 say, your papers were very thorough -- you attached about 140  
24 pages of documents.

25 MR. DIAZ: Yes, I'm sorry for that.

1 THE COURT: No, don't be sorry. You obviously kept  
2 your records. That's nothing to be sorry about. I guess my --  
3 so when you say you don't have records of the assignments or of  
4 the note, so I understand you raise the issue about the lost  
5 note and there was a lost note affidavit, and they found if not  
6 the original, at least a copy of the note that you signed and  
7 then that was to Platinum and Platinum endorsed it to RFC which  
8 endorsed it to Deutsche Bank. What is it about that note that  
9 you have questions about?

10 MR. DIAZ: Well, we asking for the original papers  
11 because they send it -- I sent a copy for the papers. We  
12 signed it. They no give the letter to me and they send it.  
13 And I ask for the original papers.

14 THE COURT: So when you --

15 MR. DIAZ: They respond --

16 THE COURT: -- when you took the -- when you  
17 refinanced with Platinum, did they give you copies of the  
18 papers that you signed: copy of the note, copy of the  
19 mortgage?

20 MR. DIAZ: I think they signed it -- they send it to  
21 me.

22 THE COURT: Okay. So you got -- when you originally  
23 refinanced with Platinum, you received copies -- photocopies of  
24 the promissory note that you had signed and of the mortgage  
25 that you signed, as well, correct?



1 MR. DIAZ: Yes, I receive it but unfortunately, when I  
2 asked -- we asked them to with my lawyer, Randy Nordlund in  
3 Miami, we want to see their original copy -- original papers,  
4 they respond in an affidavit, we lost the papers.

5 THE COURT: Well, they said they --

6 MR. DIAZ: We don't have the note.

7 THE COURT: -- lost the original --

8 MR. DIAZ: -- original note.

9 THE COURT: Right. They said that they lost the  
10 original note and they did a lost note affidavit.

11 MR. DIAZ: Yeah. And after that, they used David  
12 Stern and Homecomings Financial Service be party to the -- my  
13 best knowledge, to the -- to the governor and Deutsche Bank and  
14 they say we have it -- we have original papers, that's what  
15 Cheryl Samon say, the secretary to the -- for the whole papers  
16 to the -- David Stern. We have original papers. When we ask  
17 give them to us, we want to see it, the paper, they no -- the  
18 paper no appear. And they started to sell it to -- the  
19 property to Aurora Loan Service. It's in the Court's record.  
20 They sold the loan to Aurora.

21 THE COURT: Well they --

22 MR. DIAZ: The papers say that.

23 THE COURT: Well, does it say that or does it say that  
24 they transferred the servicing rights to Aurora?

25 MR. DIAZ: Well, that's -- oh, no. That's the -- the

1 letter, they send it to me say, but when you see the paper in  
2 the court -- in the court, you see it, the Aurora Loan Service,  
3 they say in the papers, paragraph 4 and 6 expunge motion where  
4 they set foreclosure sale, Bank America, Deutsche Bank American  
5 and Trust sold a loan to Aurora Service.

6 THE COURT: And when was that?

7 MR. DIAZ: That one is paragraph 4 and paragraph 6.  
8 It's in 200-, May 2008 --

9 THE COURT: Hang on a second.

10 MR. DIAZ: -- after the recording in the Court.

11 THE COURT: Just bear with me for a moment, okay?

12 MR. DIAZ: Okay.

13 (Pause)

14 THE COURT: Mr. Wishnew, when did Homecoming stop  
15 servicing the loan?

16 MR. WISHNEW: April 1st, 2008, Your Honor. I refer  
17 the Court to Exhibit L to Ms. Horst's declaration in support of  
18 the reply; and that is our so-called goodbye letter in which we  
19 indicate to Mr. Diaz -- and this is a letter dated March 14,  
20 2008, "Effective April 1st, 2008, the servicing of the above-  
21 referenced account," again that is the account for 5200  
22 Southwest 122nd Avenue in Miami, Florida, ZIP Code 33175, "The  
23 right to collect payments from you is being assigned, sold or  
24 transferred from Homecomings Financial to Aurora Loan Services.  
25 The assignment, sale or transfer of servicing does not affect

1 the terms or conditions of your mortgage documents" --

2 THE COURT: Just slow down a little bit, so Mr. Diaz  
3 can understand.

4 MR. WISHNEW: I apologize, Your Honor.

5 The second sentence in that first paragraph of the  
6 letter states, "The assignment, sale or transfer of servicing  
7 does not affect the terms or conditions of your mortgage  
8 documents/security instruments, other than the terms directly  
9 related to the servicing of your account. Your present  
10 servicer is Homecomings Financial, LLC. Prior to April 1st,  
11 2008, any questions regarding your account should be directed  
12 to our customer care department."

13 New paragraph: "Your new servicer will be Aurora Loan  
14 Services. Beginning April 1, 2008, any questions you have  
15 regarding your account should be directed to Aurora Loan  
16 Services."

17 THE COURT: Okay. And did Homecomings initiate the  
18 foreclosure?

19 MR. WISHNEW: Are you referring to --

20 THE COURT: The initial foreclosure action. You'd  
21 said -- because I'm looking at the same ex parte motion to  
22 reset foreclosure sale.

23 MR. WISHNEW: Um-hum.

24 THE COURT: And in paragraph 1 it says, "The plaintiff  
25 filed its complaint on June 1, 2007." And at that time,

1 Homecomings was the servicer.

2 MR. WISHNEW: I believe -- one minute, Your Honor.

3 THE COURT: Yes.

4 MR. WISHNEW: Yeah, I believe it was Homecomings  
5 Financial that would have commenced the foreclosure. I'll note  
6 that in our reply we do say on or around My 29, 2007, Diaz's  
7 loans was referred to foreclosure.

8 THE COURT: Okay. And Homecomings retained the Law  
9 Offices of David J. Stern to commence the foreclosure action  
10 against Mr. Diaz, correct?

11 MR. WISHNEW: That's right. And at that point in  
12 time -- I'll also note for the record that Deutsche -- that  
13 subsequent to the transfer of servicing, post-April 2008,  
14 Deutsche Bank as trustee for the securitization continued using  
15 the Stern firm in connection with the foreclosure.

16 THE COURT: Right, and I guess a question -- and this  
17 is a source of confusion to me and I think probably to Mr.  
18 Diaz -- in the same document, the ex parte motion to reset  
19 foreclosure sale --

20 MR. WISHNEW: Um-hum.

21 THE COURT: -- which is obviously after Homecomings  
22 ceased being the loan servicer --

23 MR. WISHNEW: Um-hum.

24 THE COURT: -- in paragraph 3, it says that, "On or  
25 about March 12, 2008, the plaintiff voluntarily canceled the

1 foreclosure sale. Deutsche Bank Trust Company Americas as  
2 trustee sold the loan to Aurora Loan Servicing, LLC."

3 Is there any evidence that Deutsche Bank sold the loan  
4 to Aurora, as opposed to Aurora becoming the servicer?

5 MR. WISHNEW: Not that I'm specifically aware of, Your  
6 Honor. I think, as you point out, it's a mischaracterization  
7 of the facts and that the documents represent as we know them  
8 to be, which is the transfer of servicing from Homecomings to  
9 Aurora.

10 THE COURT: Given that it was filed by Mr. Stern's law  
11 firm, it wouldn't surprise me if it was not accurate, but it  
12 also so-to-speak wasn't on your watch but --

13 MR. WISHNEW: That's correct, Your Honor.

14 THE COURT: -- not by much, but --

15 MR. WISHNEW: But it still wasn't on our watch.

16 THE COURT: Well, that's -- but it does give rise to  
17 some confusion. I could understand how Mr. Diaz could well be  
18 confused by the statement in this motion that the Law Offices  
19 of David J. Stern filed where they say that Deutsche Bank sold  
20 the loan to Aurora Loan Servicing. But your information is  
21 that Aurora succeeded Homecomings as the servicer?

22 MR. WISHNEW: That's correct, consistent with the  
23 terms of the goodbye letter attached to Ms. Horst's  
24 declaration.

25 THE COURT: Okay. All right.

1 Mr. Diaz, I interrupted you. I apologize for that.  
2 Do you want to pick up with your argument?

3 MR. DIAZ: Well, thank you, Your Honor. That's the  
4 reason I put an affidavit of title in 2010. That was 2010.  
5 Because I saw they no have the transfer to the legally papers  
6 and loan transfers for Deutsche to Aurora or the Homecomings to  
7 Aurora, whatever it is. And we asking the Court in here, we  
8 want to see these papers, too; but they don't present any  
9 paper.

10 THE COURT: Let me just -- when you say you want to  
11 see these papers, what papers did you want to see?

12 MR. DIAZ: The legally transfers and assignments of  
13 mortgage if I'm supposed to pay the Aurora the service, but the  
14 papers they have in the records in the court, they sold the  
15 loan. I want to see it, that one, that paper, how they sold  
16 it. The -- they sold to the -- to the Aurora in the paragraph  
17 6 -- 4 and 6, based on Margarita Esquiroz, Judge in book,  
18 26,500 page 1777, they -- it's in the record. They sold the  
19 loan to Aurora, not the service, the loan.

20 THE COURT: Well, other than the statement in this ex  
21 parte motion to reset foreclosure sale, are there any other  
22 documents that you have that would show that the loan was sold  
23 by Deutsche Bank to Aurora?

24 MR. DIAZ: Me?

25 THE COURT: Yeah. I'm just asking whether you have --

1 because I haven't seen -- I see in this ex parte motion to  
2 reset foreclosure sale in paragraph 3 that Stern's office said  
3 that Deutsche Bank sold the loan to Aurora Loan Servicing.  
4 Other than this one piece of paper, have you --

5 MR. DIAZ: No.

6 THE COURT: -- seen any other paper that says that  
7 Deutsche Bank sold the loan to Aurora?

8 MR. DIAZ: No, no have it except to the papers in the  
9 court record.

10 THE COURT: Okay. All right.

11 MR. DIAZ: And that, no have it. That's the reason we  
12 ask it many, many times for five years. We ask it Residential  
13 Capital Funding or Deutsche Bank or Platinum Bank, and we ask  
14 to then give me the paper because we want to see the -- the  
15 chain on the assignment and the -- because it's something is  
16 break in there.

17 THE COURT: Let me ask you something, is it Nationstar  
18 who is the current loan servicer of the loan?

19 MR. DIAZ: Well, they send one letter to me and say we  
20 are owner now to the service because Deutsche Bank, RALI  
21 transferred to us. And we ask you then in the court now, how  
22 you produce the assignments of mortgage on 10/25/2013 if you no  
23 have it, the documentation because you transferred before. In  
24 2007, they transferred. How they doing again? And that's what  
25 we present in the court.

1 Also, they send it to me in blank. Nobody signed it,  
2 assignment of mortgage, too.

3 THE COURT: Yeah, so --

4 MR. DIAZ: So then --

5 THE COURT: Okay. Because I've seen letters from  
6 Nationstar to you about the transfer of the servicing rights  
7 from Aurora to Nationstar. One of those letters is dated July  
8 15, 2012, and it identifies Deutsche Bank as the owner of your  
9 note. What I have to try and parse out, Mr. Diaz, is what, if  
10 any, alleged wrongdoing occurred by any of the debtors,  
11 Homecomings, for example, and what, if anything, may have  
12 occurred or give rise to fair questions after Homecomings no  
13 longer was involved.

14 So when -- because I know -- you've asked -- you had  
15 asked Aurora for information. You had also asked Nationstar  
16 for information about the loan, right?

17 MR. DIAZ: Yes, I ask it.

18 THE COURT: Okay. But that -- the issue for me is  
19 whether any of that's attributable to the debtors. So things  
20 that happened after Homecomings was out of the picture, after  
21 Aurora or Nationstar was servicing the loan, I haven't seen  
22 anything in your papers that would attribute any of that  
23 conduct to Homecomings. Are you aware of anything?

24 MR. DIAZ: No, I no saw anything except to the papers,  
25 they send it to me. What's for me surprise, Your Honor,



1 receiving one letter to Aurora and say we are transferred with  
2 the papers and transfer to us. After that, they say -- Aurora  
3 say in July 15th, 2012, we are transferring you -- when I tried  
4 to ask to the counseling, they have it, Aurora have it. He say  
5 no, we don't have it -- we don't doing misconduct, anything.  
6 After that, they send all the letters and say hey, Mr. Diaz,  
7 remember we say to you the last letter, we something had to --  
8 wrong in the paper. We have to go and fix it. We offer to you  
9 the plan, the HUD plan.

10 THE COURT: May I ask you this?

11 MR. DIAZ: Uh-hum.

12 THE COURT: Is this property your personal residence  
13 or is it an investment property?

14 MR. DIAZ: Your Honor, I live in there, my wife and  
15 me. We are starting to retire now. And I live in -- I --

16 THE COURT: May I ask you --

17 MR. DIAZ: Sorry.

18 THE COURT: -- what's the current status of the loan?  
19 Have you been making mortgage payments?

20 MR. DIAZ: No, because under -- they no finish give  
21 me -- to me, the opportunity to clarify all the loans and they  
22 doing everything right, we starting to pay everything.

23 THE COURT: May I ask --

24 MR. DIAZ: But then --

25 THE COURT: -- when did you stop making mortgage

1 payments?

2 MR. DIAZ: In 2006 -- '07, I think.

3 THE COURT: Okay. Am I correct that you have not made  
4 any mortgage payments on the property since 2007?

5 MR. DIAZ: Yes, I no -- no give nothing.

6 THE COURT: Okay.

7 MR. DIAZ: I mean, I mentioned then until we no have  
8 it clear papers, because I know -- I believe it's possible to  
9 do nothing, since we are -- want it now residential, my house.  
10 It's upside down, the loan.

11 THE COURT: Okay.

12 MR. DIAZ: Also, if I want to go into sell it, nobody  
13 buy it because it's clouded title. It's no clear because you  
14 don't mention to anybody to say -- hey, my paper is a clear on.  
15 Do you have this common situation there?

16 THE COURT: May I ask you this? Have you tried to  
17 sell the property?

18 MR. DIAZ: I put someone besides me in the -- in the  
19 title, Mr. Jacob (ph.) runs but it's impossible because he saw  
20 every paper say no, I don't intend to buy nothing.

21 THE COURT: Well, I don't understand --

22 MR. DIAZ: And nobody --

23 THE COURT: Yes, what I don't understand is why the  
24 title is clouded because the recorded mortgage is in the name  
25 of Deutsche Bank and the note has been represented to be held

1 by Deutsche Bank. So I don't understand what the cloud on  
2 title is. Deutsche Bank says they have the note and Deutsche  
3 Bank said -- and the record shows that it's recorded in the  
4 name of Deutsche Bank. So what's the cloud on title?

5 MR. DIAZ: Well, the complete matter between two  
6 assignments in 2013 and 2007 and also did the Aurora buy the  
7 loan, and that's the complete matter in the papers. And I live  
8 in the house, you say -- sorry, I didn't explain to you. I  
9 live in the house. I a farmer now with my wife, retired. I  
10 live in the production of the -- of the land to bona fide  
11 papers. But the house its value is 567,000 and they gone.

12 And I tried to doing something, agreement with the --  
13 with the entities but it's impossible to doing nothing, if they  
14 no make a decision to do it.

15 THE COURT: All right. Let me ask, is there a current  
16 foreclosure action pending against you?

17 MR. DIAZ: Yes, they put their foreclosure action, my  
18 lawyer, Mr. Randall Nordlund in this case represent to me and  
19 he say -- I think I send the letter to you in those papers. He  
20 say that Nationstar no have it. Try to foreclosure Mr. Diaz,  
21 because they no present the paper clear; and after that, the  
22 decision to sell the property, we go to the court and ask you  
23 to serve these three to the court of appeal --

24 THE COURT: I just want to make sure I understand --

25 MR. DIAZ: -- because --

1 THE COURT: -- what you're telling me. Do you know,  
2 is there a current foreclosure action pending in Florida court  
3 on behalf of Deutsche Bank brought by the loan servicer seeking  
4 to foreclose on your property?

5 MR. DIAZ: Well, yes, if we accepted to the  
6 Nationstar, their on behalf to Deutsche Bank, RALI, they are --  
7 Deutsche Bank is against me.

8 THE COURT: Okay.

9 Mr. Wishnew, can you tell me, is there a current  
10 foreclosure action pending and where?

11 MR. WISHNEW: One minute, Your Honor. I'm not  
12 certain, Your Honor, given that we haven't had contact with  
13 this loan for five years.

14 THE COURT: I know.

15 MR. WISHNEW: We just don't track in that regards.

16 THE COURT: Okay. All right.

17 Anything else, Mr. Diaz? Anything else you want to  
18 tell me? Mr. Diaz, is there anything else you want to tell me?

19 MR. DIAZ: Yes.

20 THE COURT: Go ahead.

21 MR. DIAZ: No, I want to say thank you again --

22 THE COURT: Okay.

23 MR. DIAZ: -- all of -- for doing the lot of job with  
24 me and are doing respect to the best.

25 THE COURT: All right.

1 MR. DIAZ: And you make a decision.

2 THE COURT: Thank you very much, Mr. Diaz.

3 Mr. Wishnew, is there anything you want to add?

4 MR. WISHNEW: That's it, Your Honor.

5 THE COURT: All right. I'm going to take the matter  
6 under submission.

7 MR. WISHNEW: Thank you, Your Honor.

8 THE COURT: Mr. Diaz, I'll be issuing an opinion and  
9 you'll get a copy of it when -- do we have your current  
10 address? Mr. Wishnew, do you have his current address?

11 MR. WISHNEW: Yes, Your Honor.

12 THE COURT: Okay. All right. So whenever -- because  
13 he's not on ECF, whenever I issue an opinion, you ought to  
14 serve it on him. Okay?

15 MR. WISHNEW: As a matter of practice, Your Honor, the  
16 Borrowers Trust has been routinely serving all opinions.

17 THE COURT: Excellent. All right. Thank you very  
18 much, Mr. Diaz. You're --

19 MR. DIAZ: Thank you very much, Your Honor.

20 THE COURT: You're excused if you want.

21 MR. DIAZ: Thank you, Your Honor.

22 THE COURT: We still have other matters to cover but  
23 you're -- if you wish to hang up, you can do that, too. Okay?

24 MR. DIAZ: Okay.

25 THE COURT: All right. Thank you.

1 Go ahead, Mr. Wishnew.

2 MR. WISHNEW: Last contested matter in the sixty-  
3 second omnibus claims objection is that of Michelle Lawson. I  
4 believe Ms. Lawson might be on the phone.

5 THE COURT: Ms. Lawson, are you on the phone?

6 MS. LAWSON: Yes, I am.

7 THE COURT: Okay. Thank you.

8 Go ahead, Mr. Wishnew.

9 MR. WISHNEW: Thank you, Your Honor. This deals with  
10 claim 5282, a general unsecured claim in the amount of 140,000  
11 dollars -- 140,967.98. This deals with a second loan that Ms.  
12 Lawson has against her home. It was a loan that the debtors  
13 held as an investor for only nine days but did continue  
14 servicing the loan from 2007 until servicing transferred to  
15 Ocwen in February of 2013.

16 In her claim, Ms. Lawson alleges that the loan should  
17 be considered void and rescinded upon the theory that she  
18 believed the loan had a fixed rate of five-and-three-quarter  
19 percent and that the debtor did not disclose the presence of a  
20 second loan with a balloon payment.

21 With regards to those statements, Your Honor, those  
22 all go to the origination of the loan and the disclosures  
23 associated with the loan at its origination. This was a loan  
24 that originated in 2004.

25 THE COURT: It was in December of 2004.

1 MR. WISHNEW: That's correct, Your Honor; December  
2 3rd, 2004 with Trident Second Mortgage Company. There was a  
3 first loan in the amount of 273,000 dollars. There was a  
4 second in the amount of 51,300 dollars. It's the second loan,  
5 the second mortgage, that is the subject of this claim.

6 THE COURT: Let me -- I just -- did Trident originate  
7 both the first and the second?

8 MR. WISHNEW: I believe so, Your Honor.

9 THE COURT: Okay. At the same time?

10 MR. WISHNEW: Yes, Your Honor.

11 THE COURT: Okay. Go ahead.

12 MR. WISHNEW: At the time the mortgages were  
13 originated, Ms. Lawson signed a second mortgage note for the  
14 second mortgage, a copy of which is attached to Ms. Horst's  
15 supplemental declaration in support of the reply at Exhibit P  
16 as in Peter. She also signed the balloon payment rider which  
17 explicitly states that the second mortgage was subject to a  
18 balloon payment. See Exhibit Q as in question, to the Horst  
19 declaration in support of the reply.

20 Ms. Lawson also signed an affidavit of borrower  
21 certifications that shows she acknowledged receiving copies of  
22 truth-in-lending good faith estimates, which provided  
23 information about the second mortgage and the balloon payment.  
24 Those certifications are attached at Exhibit R to the  
25 supplemental declaration.

1 In her response, she -- Ms. Lawson seems -- asserts  
2 that there are TILA issues here. But TILA issues, one, the  
3 Borrowers' Trust would assert that such issues are being raised  
4 for the first time in the response and may not be timely and  
5 improperly raised. But putting that aside, we'd also argue  
6 that the TILA claims against GMAC Mortgage are entirely  
7 improper because to the extent she'd ever wanted to rescind her  
8 loan, that's for her to deal with her -- with the investor  
9 owner of the loan, not the servicer of the loan which is what  
10 GMAC Mortgage was.

11 And with regards to the earlier disclosures that she  
12 says were not made, they were in fact made. And there's -- so,  
13 in sum, the Borrowers' Trust is asserting that the claims  
14 should be expunged because while there are some general  
15 allegations of purported wrongdoing, it's exactly that.  
16 They're general allegations. They're not specific to GMAC  
17 Mortgage or evidence of any wrongdoing by GMAC Mortgage.

18 To the extent that Ms. Lawson makes general statements  
19 about GMAC's practices, those are simply just broad-based  
20 statements that have no specific relationship to her loan.

21 So for the reasons stated in the objection, as well as  
22 in the reply, and including Ms. Horst's supporting declaration,  
23 we would ask that this claim be disallowed and expunged.

24 THE COURT: Let me ask you some questions. Do you  
25 know who services the first loan -- first lien?



1 MR. WISHNEW: I can check on that, Your Honor.

2 THE COURT: Let me ask two questions then. Who is  
3 servicing the first loan? Who was servicing the second before  
4 GMAC acquired it?

5 MR. WISHNEW: If you could give me one minute, Your  
6 Honor.

7 THE COURT: Yes, go ahead.

8 MR. WISHNEW: Thank you.

9 (Pause)

10 MR. WISHNEW: Your Honor, I don't have that  
11 information at my fingertips. I'd have to go back into the  
12 company servicing records and get some historical information.

13 THE COURT: Let me -- am I correct that GMAC acquired  
14 the second lien loan and servicing rights on February 1, 2007?

15 MR. WISHNEW: That is correct, Your Honor.

16 THE COURT: And it sold the loan, the second lien loan  
17 on March 30th, 2007?

18 MR. WISHNEW: That is correct, Your Honor.

19 THE COURT: And continued servicing until the  
20 servicing rights were sold to Ocwen?

21 MR. WISHNEW: Your Honor, did you say February 1st or  
22 February 21st?

23 THE COURT: 21st.

24 MR. WISHNEW: Okay, yes. Correct, Your Honor. That's  
25 consistent with the representations made in Exhibit A to the

1 sixty-second omnibus objection.

2 THE COURT: All right. Do you have any information at  
3 all that GMAC had anything to do with the origination of the  
4 first or second loans in December 2004?

5 MR. WISHNEW: No, Your Honor.

6 THE COURT: All right. Let me hear from Ms. Lawson.  
7 Ms. Lawson?

8 MS. LAWSON: Good morning, Your Honor. Thank you for  
9 hearing me.

10 THE COURT: Sure.

11 MS. LAWSON: I'm Michelle Lawson, representing  
12 Michelle Lawson, et al., claim number 5282. And we're asking  
13 the Court to allow our claim to proceed and not to expunge it  
14 during this bankruptcy proceeding.

15 If it may please the Court, the debtor has submitted  
16 documents into evidence, but we cannot authenticate many of  
17 these loan origination documents because we've never seen some  
18 documents until the debtor submitted them as part of this  
19 bankruptcy proceeding.

20 Documents and records in electronic or digital format  
21 are suspect in this context due to the notorious predatory  
22 lending and sub-prime schemes circa 2004 to 2007, the time  
23 period during which the loan referenced in claim number 5282  
24 was not only originated but also purchased, transferred and  
25 serviced.

1 THE COURT: So, let me ask -- Ms. Lawson, let me ask  
2 you a few questions about that. You obtained both the first  
3 and second loans at essentially the same time --

4 MS. LAWSON: Yes.

5 THE COURT: -- from Trident. Am I correct in that?

6 MS. LAWSON: Yes.

7 THE COURT: And did you deal with anybody from GMAC-M  
8 at the time that you obtained the loans from Trident in  
9 December 2004?

10 MS. LAWSON: No.

11 THE COURT: Okay. All right. Go ahead.

12 MS. LAWSON: Forgery during the digital age is a more  
13 insidious act. It is neither uncommon nor difficult to  
14 surreptitiously create an image of an individual handwritten  
15 signature.

16 THE COURT: May I ask you this? Are there specific  
17 documents that you claim are forgeries?

18 MS. LAWSON: Yes.

19 THE COURT: Which ones?

20 MS. LAWSON: For example, the Federal Truth-In-Lending  
21 Disclosure Statements in Exhibit R.

22 THE COURT: Those were given to you by Trident though,  
23 correct?

24 MS. LAWSON: That -- I'm looking at Exhibit R of what  
25 the debtor sent out on -- it's Exhibit R of the Lawson

1 affidavit -- affidavit, pardon -- of borrower certification and  
2 TILA disclosure statement. And there's --

3 THE COURT: Right. You received -- at the time you  
4 received the loan from Trident, did they give you disclosure  
5 statements?

6 MS. LAWSON: For one loan. That's what I recall.  
7 That's what our records show. So that's why I'm saying this  
8 second loan -- these documents, we have never seen before.

9 THE COURT: Go ahead.

10 MS. LAWSON: So these electronic or digital images can  
11 then be transferred to documents of anyone's choosing, and this  
12 technology was in existence in 2004, and we believe that this  
13 technology was used in this case.

14 As a family participating in the American dream in  
15 2004, we worked hard, sacrificed and saved our money and paid  
16 our debts. We invested our life savings and work in a home.  
17 We thought that we would be getting a thirty-year conventional  
18 fixed-rate mortgage. However, at the settlement table, also  
19 known as closing, the principles of good faith, honest dealing  
20 and freedom to contract went awry. During the settlement  
21 process, we would have been in breach of contract, as well as  
22 in jeopardy of losing tens of thousands of dollars in the form  
23 of a down payment and liquidated damages, had we not proceeded  
24 with the transaction on that day.

25 When your life savings, goodwill, good name and

1 creditworthiness are held for ransom or are hanging in the  
2 balance this is akin to duress, unconscionability, and  
3 fraudulent inducement to contract.

4 THE COURT: Did you ever bring a lawsuit against  
5 Trident?

6 MS. LAWSON: Pardon?

7 THE COURT: Did you ever bring a lawsuit against  
8 Trident?

9 MS. LAWSON: No.

10 THE COURT: Did you sign the affidavit of borrower  
11 certifications acknowledging that you had received the Truth-  
12 In-Lending Good Faith Estimate?

13 MS. LAWSON: For one of the loans, because we received  
14 an 80/20 product. I was expecting a thirty-year conventional,  
15 not a 80/20.

16 THE COURT: Go ahead.

17 MS. LAWSON: Given these facts, a reasonable person  
18 would proceed with the belief that she will be able to seek  
19 judicial relief and restitution at some later point. However,  
20 subsequent specific requests for copies of documents were  
21 denied among other egregious acts or omissions to act were  
22 committed.

23 Due to those constructive denials or obstructions,  
24 arguably the statute of limitations not only barred our claims  
25 and adversely impacted our legal rights but also absolved the

1 debtor in large part from any liability. However, in this  
2 case, the debtor we believe is liable apart from TILA and other  
3 related statutes because of their individual actions, not only  
4 during this proceeding but from the time they began servicing  
5 the loan.

6 THE COURT: What actions by the debtor do you claim  
7 were wrongful?

8 MS. LAWSON: We requested specific loan origination  
9 documents and documents pertaining to the loan. We never  
10 received the loan application until Ocwen sent it for -- and  
11 then there are other documents that I've again, never seen or  
12 we have never seen before that have appeared as a part of this  
13 bankruptcy proceeding.

14 So that, you know -- and then the debtor presents a  
15 log with their business records, and we question whether it is  
16 a truly accurate record of every call and/or request that we  
17 made as evidenced by the omitted loan application and  
18 production of supporting loan origination documentation.

19 THE COURT: Did you request those documents in  
20 writing?

21 MS. LAWSON: No. It was always by phone.

22 THE COURT: And when did you do that?

23 MS. LAWSON: When we -- we did it several times over  
24 the course of the loan. I can get those specific dates. I  
25 don't have them with me right now.

1 THE COURT: Okay.

2 MR. WISHNEW: Your Honor, I would add for the record,  
3 with regards to Ms. Lawson's allegation of not providing  
4 documents. In Exhibit A to the omnibus objection, the debtor  
5 specifically states, "Claimant requested executed copies of the  
6 mortgage and the note from the debtor on February 8th, 2010  
7 which debtor provided to claimant on February 12th, 2010."

8 THE COURT: Did you receive those documents from the  
9 debtor, Ms. Lawson?

10 MS. LAWSON: Yes.

11 THE COURT: Go ahead, Ms. Lawson.

12 MS. LAWSON: Those documents that are at issue, again,  
13 the statute of limitations prevented us from actually going  
14 forward with any claims against Trident. But that aside, you  
15 know, the issue here is that we question the authenticity of  
16 these documents, because there is a clear pattern here from our  
17 perspective, on the part of the debtor, to withhold information  
18 and to only disclose it for their sole benefit. For -- you  
19 know, the copy of the loan application that we submitted was  
20 taken into evidence or as an exhibit to the objection was taken  
21 by telephone, if you were to read it, and it does not have the  
22 signature of all parties and has several inaccuracies with  
23 respect to creditor information, among other things.

24 It is likely that the debtor strategically purchased  
25 the loan at the time, because they knew that the statute of

1 limitations would likely bar any claim. And because the debtor  
2 purchased the rights to collect on the debt, it is also likely  
3 that the purchase -- that they purchased the rights and  
4 obligations of the loan originator, as well as subsequent  
5 servicers and purchasers.

6 And as applied, these facts lend themselves to the  
7 conclusion that the debtor is a classic assignee. Moreover, we  
8 believe that the debtor knowingly collected monies and/or  
9 payment on a note, a mortgage, that were created under  
10 fraudulent circumstances. And the debtor has made a profit at  
11 our expense and to our collective detriment.

12 THE COURT: All right. Anything else you want to add,  
13 Ms. Lawson?

14 MS. LAWSON: No. Actually, I would like to say that  
15 those digital signatures and images of individual handwritten  
16 signatures were being created in 2004 and used quite  
17 frequently. Thank you.

18 THE COURT: Whose signatures?

19 MS. LAWSON: Just -- it's a -- I --

20 THE COURT: Are you saying that your signature was  
21 forged?

22 MS. LAWSON: I -- I believe that our signatures were  
23 forged.

24 THE COURT: Where? Tell me. I want to know exactly  
25 where you say your signature was forged.



1 MS. LAWSON: On documents related to the second --

2 THE COURT: Don't tell me on documents. I want to  
3 know specifically, Ms. Lawson, if there are specific --

4 MS. LAWSON: The Truth-In --

5 THE COURT: Stop. Stop. Let me finish my question.  
6 Can you point me to specific documents on which you say your  
7 signature was forged?

8 MS. LAWSON: Yes.

9 THE COURT: All right. I want you to identify very  
10 specifically which documents you claim contain a forged  
11 signature of yours.

12 MS. LAWSON: In Exhibit O, Lawson Deed of Trust, there  
13 is the document with the balloon payment rider to note and  
14 security agreement. The request for default -- pardon me,  
15 request for notice of default and foreclosure. And -- and  
16 under Exhibit P, the mor -- the Lawson second mortgage note,  
17 that document that's attached to that. And it's --

18 THE COURT: You're saying that your signature is  
19 forged on the Lawson second mortgage note?

20 MS. LAWSON: Yes.

21 THE COURT: And have you put in an affidavit to that  
22 effect?

23 MS. LAWSON: I have not.

24 THE COURT: What's the status of the property, Ms.  
25 Lawson?

1 MS. LAWSON: We are currently paying the mortgage and  
2 it has been on time since its inception or origination.

3 THE COURT: Okay. So both the first and second  
4 mortgages are current?

5 MS. LAWSON: Yes.

6 THE COURT: Okay. All right. Anything else you want  
7 to add?

8 MS. LAWSON: As far as documents?

9 THE COURT: Anything you want to add?

10 MS. LAWSON: There are -- there are some other  
11 forgeries, both -- the documents in which -- in Exhibit R, as  
12 well.

13 THE COURT: What's the forgery?

14 MS. LAWSON: The signatures on those Truth-In-Lending  
15 statements, two of which have different dates, as well as the  
16 affidavit of borrower certification. And we are alleging this  
17 with regard -- with respect to the second loan only, not the  
18 primary loan, because that is what we expected to get.

19 THE COURT: So you're saying your signature is forged  
20 on the certification -- borrower certification on the second  
21 loan?

22 MS. LAWSON: Uh-hum.

23 THE COURT: But not on the certificate for the first  
24 loan?

25 MS. LAWSON: Right. And I -- the one for 273 or the

1 larger jumbo loan or the first loan.

2 THE COURT: And when did you first obtain copies of  
3 the documents?

4 MS. LAWSON: The mortgage and note, we obtained copies  
5 of I believe in 2010; and actually I can double-check that.  
6 But the rest of these other documents, we have just received as  
7 part of this bankruptcy proceeding. For example --

8 THE COURT: All right.

9 MS. LAWSON: -- the documents --

10 THE COURT: Did you receive any documents in 2010 that  
11 you believe contain forged signatures of yours?

12 MS. LAWSON: I did.

13 THE COURT: And did you --

14 MS. LAWSON: I --

15 THE COURT: -- call that to anybody's attention at the  
16 time?

17 MS. LAWSON: Not anyone in any official capacity.

18 THE COURT: Okay. If you received copies of documents  
19 that you believed contained forged signatures, why didn't you  
20 call that to the attention of the loan servicer?

21 MS. LAWSON: I did. But again, to me that's not in an  
22 official capacity.

23 THE COURT: All right. Anything else you want to add?

24 MS. LAWSON: No.

25 THE COURT: All right. Mr. Wishnew, anything you want

1 to add?

2 MR. WISHNEW: We'll stand on our papers, Your Honor.

3 THE COURT: All right. I'm going to take the matter  
4 under submission.

5 MR. WISHNEW: Thank you, Your Honor.

6 THE COURT: Thank you, Ms. Lawson.

7 MS. LAWSON: Thank you.

8 MR. WISHNEW: I will turn the podium over to Ms.  
9 Rothchild for the sixty-third omnibus objection.

10 THE COURT: Okay.

11 MR. WISHNEW: It should be the last contested matter  
12 on today's calendar.

13 THE COURT: All right.

14 (Pause)

15 MS. ROTHCHILD: Good morning, again, Your Honor.

16 Meryl Rothchild of Morrison & Foerster on behalf of the ResCap  
17 Liquidating Trust.

18 The next and final claims objection matter on the  
19 agenda is on page 7, number 3. The Liquidating Trust's sixty-  
20 third omnibus claims objection as to purported administrative  
21 claims filed at docket number 6845.

22 Your Honor, through the sixty-third omni claims  
23 objection, the Trust seeks to expunge a total of thirty-one  
24 claims on the bases noted on Exhibits A through D appended to  
25 the proposed order because they fail to sufficiently

1 demonstrate that they are valid administrative expense claims.

2 THE COURT: May I ask, there were six responses.

3 MS. ROTHCHILD: Correct. I can walk through those,  
4 Your Honor.

5 THE COURT: No, I just want to find out on  
6 appearances.

7 MS. ROTHCHILD: Oh, of course.

8 THE COURT: Is anybody appearing on behalf of Norma  
9 Rodriguez? No response.

10 Anybody appearing on behalf of Vicki West? No  
11 response.

12 Anyone appearing on behalf of Elda and Maria Thompson?

13 Is anyone appearing on behalf of Tom Franklin?

14 Is anyone appearing on behalf of Charles Clark?

15 Is anyone appearing on behalf of Tamara Carlson-  
16 Callahan?

17 All right. Those are the six, as I understand it, six  
18 individuals who filed responses to the objection, and none of  
19 them have indicated an appearance.

20 Go ahead, Ms. Rothchild.

21 MS. ROTHCHILD: Thank you, Your Honor.

22 In support of the objection, the trust submitted two  
23 declarations, one by Deanna Horst, appended to the objection as  
24 Exhibit 1A and the other by Joseph Morrow of KCC, appended as  
25 Exhibit 1B to the objection.

1 As an initial matter, Your Honor, a number of the  
2 claimants, parties to the objection, did not expressly  
3 designate their requests seeking the allowance of  
4 administrative expense claims. A number of them appeared to be  
5 in response to these claimants' receipt of the administrative  
6 claims bar date notice entered on December 17th, 2013 at docket  
7 number 6138. So as a result, out of an abundance of caution,  
8 the Liquidating Trust treats these claims as purported  
9 administrative claims.

10 So the Trust reviewed the claim submissions subject to  
11 this objection and found that the claimants failed to meet  
12 their burden -- his or her burden to demonstrate the validity  
13 of their purported administrative expense claim under Section  
14 503 of the Bankruptcy Code.

15 Specifically, in Exhibits A through D appended to the  
16 proposed order, those listed on Exhibit A appear to be  
17 duplicative of claims already filed as pre-petition claims by  
18 the same claimant, many of those claims of which have already  
19 been disallowed and expunged by order of this Court.

20 Other purported administrative claims listed on  
21 Exhibit B were filed after the January 16th, 2014  
22 administrative claim bar date. As reflected in the Morrow  
23 declaration, the administrative claim bar date notice was  
24 timely served at the last recorded address in the debtors'  
25 books and records to these claimants.

1 Also, these submissions violate the procedures and  
2 deadlines for filing administrative claims as provided in  
3 Article 2(a) of the confirmed plan in these cases.

4 Exhibit C includes purported administrative claims  
5 that the trust determines to be both duplicative of pre-  
6 petition claims filed by the same claimants, as well as claims  
7 that are late filed after the --

8 THE COURT: Well, let me just -- since no one has  
9 appeared on these, let me --

10 MS. ROTHCHILD: Sure.

11 THE COURT: -- ask you some specific questions.

12 MS. ROTHCHILD: Sure.

13 THE COURT: With respect to the Norma Rodriguez claim,  
14 it's claim 7450 --

15 MS. ROTHCHILD: Yes, Your Honor.

16 THE COURT: -- your opening remarks indicated that  
17 none of these qualified as administrative claims, but I read  
18 the objection as to Rodriguez as only based on it being a late-  
19 filed claim. Are you -- what's the basis of your objection to  
20 the Rodriguez claim?

21 MS. ROTHCHILD: Your Honor, we -- our objection to the  
22 Rodriguez claim is based on the timeliness of her claim. We've  
23 reserved rights as to the merits of the claim, but we believe  
24 that because her claim was received by KCC and on the docket by  
25 February 19th, over a month past the administrative claim bar

1 date, for that reason and her failure to sufficiently rebut the  
2 presumption that she received timely service, as well as  
3 showing any reasonable excuse to amount to cause for her late  
4 filed claim, we think that should be dispositive of the  
5 allowance of her purported administrative claim.

6 THE COURT: So Ms. Rodriguez had filed a lawsuit in  
7 federal court in Central District of California on November  
8 15th, 2012, one day prior to the bar date. What, if any,  
9 effect should the Court give to the lawsuit?

10 MS. ROTHCHILD: Your Honor, as explained, we did not  
11 go into the details in the objection, but I'm happy to answer  
12 these questions.

13 THE COURT: Well, I just -- you know, because you may  
14 well have had a -- the only thing I'm being asked to rule on is  
15 whether it was timely proof of claim, is that right?

16 MS. ROTHCHILD: Well, we think it should be disallowed  
17 and expunged for her failure to submit a timely administrative  
18 claim in accordance to the rules.

19 THE COURT: That's the only grounds on which you're  
20 moving to expunge the claim, am I correct?

21 MS. ROTHCHILD: At this time. Though, we have  
22 reserved to raise any other claim as to the merits if the Court  
23 decides not to sustain the objection.

24 THE COURT: Okay. All right. With respect to the  
25 claim of Tamara Carlson-Callahan, it's claim 7432, tell me what



1 grounds you're seeking to have the claim -- the administrative  
2 claim disallowed and expunged.

3 MS. ROTHCHILD: I didn't get to this earlier, Your  
4 Honor, but the Trust has since resolved the objection, both as  
5 to Mr. Clark, Ms. Carlson-Callahan and also Ms. Thompson.

6 THE COURT: And I saw the references to -- has that --  
7 so those are not going forward today.

8 MS. ROTHCHILD: Those are going forward and they  
9 have -- with the discussion. We also have e-mail written  
10 confirmation that they understand the purpose of the objection  
11 and --

12 THE COURT: May I see that?

13 MS. ROTHCHILD: The written confir -- sure.

14 THE COURT: I mean because you're asking me to expunge  
15 claims as to which a response was filed; and I know you're  
16 indicating that those matters have been resolved. I would like  
17 to see -- but the claimants themselves did not file anything.

18 MS. ROTHCHILD: In addition to, I'm sorry. I'm not  
19 sure --

20 THE COURT: Well, did they file something --

21 MS. ROTHCHILD: Oh, you mean that we acknow --

22 THE COURT: -- acknowledging that their claim would be  
23 expunged?

24 MS. ROTHCHILD: No, no. We --

25 THE COURT: Let me see --

1 MS. ROTHCHILD: -- I will --

2 THE COURT: -- let me see what you've got.

3 MS. ROTHCHILD: Absolutely. One moment, Your Honor.

4 (Pause)

5 MS. ROTHCHILD: May I approach?

6 THE COURT: Yes, please and I'll give this back to  
7 you.

8 MS. ROTHCHILD: Okay. So this is some of the --

9 THE COURT: Well, speak up. You'll be picked up on  
10 this mic, so --

11 MS. ROTHCHILD: Oh, okay. Thank you. So this e-mail  
12 is between myself and Mr. Charles Clark, and it indicates that  
13 we had a discussion. He understands that he still has a  
14 surviving claim on the claims register; and what he filed was,  
15 in fact, in response to his receipt of the administrative  
16 claims bar date. So he's comfortable knowing that he preserves  
17 his rights.

18 THE COURT: All right. Let me read it --

19 MS. ROTHCHILD: Oh, sure; of course.

20 THE COURT: -- and go back to my notes.

21 (Pause)

22 THE COURT: All right. What Ms. Rothchild just handed  
23 me is an e-mail string between her and Mr. Clark. Mr. Clark's  
24 claim that's the subject of the current motion is claim 7315  
25 filed on January 7th, 2014, in the amount of 19,712 dollars

1 unsecured and 60,000 dollars secured against ResCap.

2 I've reviewed the e-mail exchange between Ms.  
3 Rothchild and Mr. Clark. In a June 4th, 2014 e-mail from Ms.  
4 Rothchild to Mr. Clark, Ms. Rothchild said in part, "Pursuant  
5 to our conversation this afternoon, please confirm that you  
6 have agreed to let the objection ride through with respect to  
7 claim number 7315, as it is based on the same claim that is  
8 asserted in your previously filed pre-petition proof of claim,  
9 claim number 1188. As discussed, this will not result in any  
10 prejudice to claim number 1188. Claim number 1188 still  
11 remains on the claims register and both you and the ResCap  
12 Trusts reserve their rights in connection with the claim. If  
13 you agree to proceed in this fashion, please confirm by  
14 responding to this e-mail to let me know. Many thanks.  
15 Meryl." That was at 11:10 a.m.

16 At 7:55 p.m., Mr. Clark responded in an e-mail to Ms.  
17 Rothchild, "I am in receipt of your e-mail and agree with the  
18 discussed redundant objection regarding claim number 7315 and  
19 to let it ride through and that asserted claim number 1188  
20 still remains on the claims register. Please take notice that  
21 I reserve my right to the claim and all that is afforded me  
22 with regard to the claim including but not limited to an  
23 investigation into possible unlawful act of GMAC Mortgage  
24 selling my loan to Green Tree for an incorrect and overstated  
25 amount of 19,712 dollars. Thank you. Chuck Clark."

1 So I'll return that to you. So with respect to Mr.  
2 Clark's administrative claim 7315, the objection is sustained.

3 MS. ROTHCHILD: Thank you, Your Honor. The next is an  
4 e-mail chain between myself and Tamara Carlson-Callahan.

5 THE COURT: All right.

6 MS. ROTHCHILD: You may want to start from the back.

7 THE COURT: Okay.

8 MS. ROTHCHILD: She, too, is in a similar situation as  
9 Mr. Clark in that she still has a valid pre -- well, I don't  
10 want to say valid but --

11 THE COURT: She still has a claim pending.

12 MS. ROTHCHILD: Exactly. She still has a pre-petition  
13 claim pending on the claims register.

14 THE COURT: All right. Let me read this e-mail chain.

15 MS. ROTHCHILD: Of course.

16 (Pause)

17 THE COURT: All right. So what I've been shown is an  
18 e-mail chain between Ms. Rothchild and Tammy Carlson; and there  
19 are a whole series of e-mails. I'll just refer to two of them  
20 because I think that basically, fairly summarizes. In an  
21 e-mail on May 22, 2014, Ms. Rothchild wrote to Ms. Carlson, and  
22 I'll only quote it in part, "The ResCap debtors filed an  
23 objection to claim number 3887 but not to expunge the claim but  
24 rather to list it as against the appropriate debtor entity.  
25 This means that claim number 3887 is still on the claims

1 register and has not been objected to on the merits as of  
2 today.

3 "The second claim you filed, claim number 7432, appear  
4 to be in response to your receipt of the administrative bar  
5 date notice. However, in looking at the claim it seems to be  
6 asking for exactly what you're asking for in claim number 3889.  
7 Because of this, it seems that it is related to a pre-petition  
8 claim (meaning something that you're saying the debtor owes to  
9 you, an obligation that was incurred prior to the debtors' May  
10 14, 2012 bankruptcy filing date). Since it relates to an  
11 asserted pre-petition claim, it is not by definition an  
12 administrative claim, which is a claim that arises after the  
13 debtor files for bankruptcy. Please let me know if this makes  
14 sense. Accordingly, at this time we're seeking to remove this  
15 later filed claim from the claims register because you already  
16 have a claim on the claims register seeking that very same  
17 relief."

18 On May 22 at 5:40 -- and Ms. Rothchild's e-mail to Ms.  
19 Carlson was at 9 a.m. -- at 5:40 p.m., Ms. Carlson responded by  
20 e-mail, "Hi, Meryl: Okay. Yes, I completely and fully  
21 understand your clarity. Thank you so much for explaining so  
22 explicitly and accurately. Please remove the claim that does  
23 not coincide with my original claim. These lawsuits are  
24 sometimes cumbersome and verbose, difficult for me to  
25 understand. Thank you for your time. I truly appreciate your

1 help in this matter."

2 So with respect to the claim, the administrative claim  
3 of Tamara Carlson-Callahan, it's claim number 7432 against  
4 ResCap filed on January 21, 2014, asserting a 60,300-dollar  
5 administrative priority claim, the debtors' objection is  
6 sustained and the administrative claim is expunged.

7 MS. ROTHCHILD: Your Honor, thank you. I appear to  
8 have not included the e-mail confirmation from Ms. Thompson,  
9 but I am happy, as soon as I get back to the office, to forward  
10 that e-mail confirmation to the Court.

11 THE COURT: All right. Let me just -- and could you  
12 summarize what that e-mail exchange between you and the  
13 Thompsons -- it's Elda M. and Maria M. Thompson. It's claim  
14 7431, received by KCC on January 17th, 2014 and what is the  
15 substance?

16 MS. ROTHCHILD: Well, we spoke on the phone and  
17 essentially they initially didn't intend to have the letter on  
18 the docket. It was more just a question towards us. And once  
19 explained, again, the purpose of the objection, she  
20 understood -- Ms. Thompson understood and similar to these  
21 other claimants, said that she was comfortable having the  
22 objection ride through.

23 THE COURT: All right. So subject to the Court  
24 reviewing that e-mail exchange, I'll sustain the objection.  
25 Okay.

1 MS. ROTHCHILD: Thank you, Your Honor.

2 THE COURT: And you can forward an e-mail to one of my  
3 law clerks and we'll review it. And when you submit the order,  
4 assuming that -- I'm sure you had accurately described it, but  
5 I'll review that.

6 MS. ROTHCHILD: Thank you, Your Honor.

7 THE COURT: Okay. All right.

8 MS. ROTHCHILD: If the Court has any other questions,  
9 I'm happy to answer them. If not, I'll --

10 THE COURT: Let's talk about -- hang on. Let me -- so  
11 we've dealt with the Clark claim --

12 MS. ROTHCHILD: Correct.

13 THE COURT: -- the Tom Franklin claim, it's claim  
14 number 7335 filed on January 20th, 2014, in the amount of  
15 131,000 dollars against ResCap. And Mr. Franklin is no  
16 stranger to this Court. And your position is that Mr.  
17 Franklin's two responses to the objection don't provide any  
18 factual or legal arguments or evidence in support of his  
19 purported administrative claim against the debtors. Am I  
20 correct in that?

21 MS. ROTHCHILD: Yes, Your Honor. And also that as  
22 evidenced by just the face of his claim, it does not -- it also  
23 seems that if anything, it would attempt to reassert his claim  
24 number 1195, though again, it is completely bare. But that is  
25 the only guess that the debtors would have as to any sort of

1 claim Mr. Franklin would hold.

2 THE COURT: All right. And with respect to claim  
3 number 1195 --

4 MS. ROTHCHILD: The --

5 THE COURT: -- it was filed by Mr. Franklin on October  
6 12, 2012 and the claim was expunged pursuant to this Court's  
7 order granting the debtors' twenty-first omnibus objection.  
8 That's at ECF 4241. That claim asserted a 134,000-dollar claim  
9 against EPRE, LLC with a stated basis, "loan modification  
10 refused." No documents were attached to claim number 1195.  
11 Pursuant to the procedures order, the debtor sought additional  
12 information from Mr. Franklin. He didn't respond.

13 The debtors then objected to Franklin's claim based on  
14 insufficient documentation pursuant to the twenty-first omnibus  
15 objection. Mr. Franklin filed three responses: on July 18th,  
16 2013, that was at ECF 4282; on September 5th, 2013 at ECF  
17 docket 4961; and on September 6th, 2013, at ECF docket 4980.  
18 None of these responses provided additional documentation for  
19 his claim and the Court sustained the twenty-first omnibus  
20 objection. At the September 11th, 2013 hearing, Mr. Franklin  
21 did not appear in person or by telephone and accordingly, claim  
22 1195 was expunged.

23 Mr. Franklin has appealed -- he did appeal the order  
24 expunging his claim to the Southern District -- the District  
25 Court for the Southern District of New York. His appeal was



1 denied. See case number 1:13-cv-08317, ECF docket number 25.  
2 He's now appealed that decision to the Second Circuit. It's  
3 case number 14-00418 in the Second Circuit.

4 All right. The information provided by Mr. Franklin  
5 does not provide a basis for allowing an administrative expense  
6 claim. Therefore, claim 7335, the objection is sustained and  
7 the claim is expunged.

8 MS. ROTHCHILD: Thank you, Your Honor.

9 THE COURT: So, we have the Vicki West claim.

10 MS. ROTHCHILD: Yes, Your Honor.

11 THE COURT: Vicki West filed claim 7322 against ResCap  
12 on January 14th, 2014 in the amount of \$29,849.85. Claim 7322  
13 contains a letter from West dated January 10th, 2014 regarding  
14 claim number 995, that West had previously filed.

15 With respect to claim number 995, the stated basis  
16 was, "mortgage notes." The only documents appended to the  
17 proof of claim, four more letters from GMAC-M to West informing  
18 West that she was eligible for certain loan modifications and  
19 it also attached the related executed loan modification  
20 agreement.

21 The debtors objected to claim number 995 in debtors'  
22 twenty-seventh omnibus objection to claims; it's at ECF 4735.  
23 And West did not respond to that objection. So the claim  
24 was -- that earlier claim 995 was expunged pursuant to order  
25 granting the debtors' twenty-seventh omnibus objection. It's

1 at ECF 5199 and it was on the basis of insufficient  
2 documentation.

3 In her purported administrative claim, West alleges  
4 that GMAC-M engaged in fraudulent and deceptive behavior by  
5 failing to fully explain the details and the risks of mortgage  
6 loans to her before she purchased two mortgage loans. She also  
7 attaches a marked-up copy of claim 995 and showing it as,  
8 "revised claim."

9 Claim number 7322 does not, however, raise any claims  
10 that have arisen post-petition, nor has she appended  
11 documentation to claim 7322 to demonstrate that it arose post-  
12 petition. She does not assert that her claim qualifies as an  
13 administrative expense claim but instead appears to have sent  
14 in her claim in response to a notice of entry of the  
15 confirmation order confirming the Chapter 11 plan in these  
16 cases.

17 This latest West claim is not an administrative claim  
18 but it instead relates to her pre-petition claim which has  
19 already been expunged. She cannot use the administrative claim  
20 process as an attempt to reassert the same claim that has  
21 already been expunged. Therefore, the debtors' objection to  
22 West claim 7322 is sustained and the claim is expunged.

23 MS. ROTHCHILD: Thank you, Your Honor.

24 There's just one other point I would like to raise,  
25 but it's in connection with Mr. Franklin's filings.

1 THE COURT: Sure.

2 MS. ROTHCHILD: I'm not sure if now is the appropriate  
3 time --

4 THE COURT: Go ahead.

5 MS. ROTHCHILD: -- but since he hasn't appeared  
6 telephonically --

7 THE COURT: Go ahead. I want to hear it.

8 MS. ROTHCHILD: So he had filed --

9 THE COURT: He had notice of the hearing. Go ahead.

10 MS. ROTHCHILD: He did. That is correct, Your Honor.  
11 He did file two responses at docket numbers 6955 and 6967  
12 relating to this objection that were substantially similar. So  
13 for that reason, the trust treated them as one filing.

14 But on June 3rd, Mr. Franklin did file two additional  
15 documents at docket numbers 7043 and 7044 stating Mr.  
16 Franklin's contentions as to certain filings that should not be  
17 allowed. Neither of those appear to relate to this sixty-third  
18 omnibus claims objection; but again, the trust just wanted to  
19 note for the record that they did not relate and again, since  
20 Mr. Franklin isn't here to explain them --

21 THE COURT: All right. With respect to these two  
22 additional documents, 7043 and 7044, they purport to be  
23 opposition to Ally's motion to enforce this Court's order  
24 regarding the plan support agreement which has been adjourned  
25 to June 26, 2014, to that omnibus date and to which Mr.

1 Franklin is not a party.

2 And the second is the debtor -- refers to the debtors'  
3 sixty-first omnibus objection which the Court granted at the  
4 last omnibus hearing and to which Franklin was not subject.  
5 See the order granting ResCap borrowers claim trust sixty-first  
6 omnibus objection to claims, no liability borrower claims. ECF  
7 docket number 7015. Mr. Franklin hasn't appeared here today  
8 and therefore -- I had intended to inquire of him about these  
9 if he did, but he has not appeared in person or by telephone.

10 MS. ROTHCHILD: Okay. Thank you, Your Honor. And  
11 that is all with respect -- we'll submit a revised, I guess,  
12 exhibits and the proposed order for signature.

13 THE COURT: Thank you very much, Ms. Rothchild.

14 MS. ROTHCHILD: Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Wishnew.

16 MR. WISHNEW: Thank you, Your Honor.

17 THE COURT: Thank you, Ms. Horst.

18 MR. WISHNEW: One question for the record?

19 THE COURT: Yeah.

20 MR. WISHNEW: For the sixty-second omnibus objection,  
21 may we submit the order less the claims you've taken under  
22 advisement today?

23 THE COURT: Yes, you can.

24 MR. WISHNEW: Excellent.

25 THE COURT: Yeah, I'll issue separate --

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 MR. WISHNEW: Yeah.

2 THE COURT: -- decisions with respect to the ones I  
3 took under advisement.

4 MR. WISHNEW: Great.

5 THE COURT: Okay.

6 MR. WISHNEW: Thank you so much, Your Honor.

7 THE COURT: Thank you. All right. We're adjourned.

8 (Whereupon these proceedings were concluded at 12:06 PM)

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I N D E X

RULINGS

	Page	Line
Sixty-fourth omnibus objection to claims is	8	14
sustained and the claims are expunged other		
than with respect to the claims by Marion		
County and Galveston County		
The sixty-fifth omnibus objection to claims	10	13
is sustained and the claims are expunged		
The sixty-sixth omnibus objection to claims	13	21
is sustained		
Objection to Ewings' claim (sixty-second	19	2
omnibus objection) is sustained.		
Objection to Mr. Clark's claim 7135	68	2
sustained.		
Objection to Thompson claim 7431	70	6
sustained		
Objection to Tamara Carlson-Callahan	70	24
claim 7432 sustained		
Objection to Franklin claim 7335	73	6
sustained		
Objection to West claim 7322, sustained	74	22

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RULINGS

Page Line

Sixty-second omnibus objection to claims 76 20  
sustained, except as related to matters  
under submission

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

*Penina Wolicki*

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PENINA WOLICKI

AAERT Certified Electronic Transcriber CET\*\*D-569

eScribers

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New York, NY 10040

Date: June 11, 2014